IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JAMES EARL WILKERSON, Plaintiff, v. BOBBY LUMPKIN, Defendant.	§ § § § § § § § § §	CIVIL ACTION NO. 5:20-CV-00173-RWS

ORDER

James Earl Wilkerson, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation recommending the petition be dismissed as barred by the applicable statute of limitations. Docket No. 17.

The Court has considered the Report and Recommendation along with the record and pleadings. Petitioner received the Report and Recommendation on June 28, 2021. Docket No 18. No parties filed objections to the Report and Recommendation. Accordingly, Petitioner is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, he is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings in this case and the Report and Recommendation of the Magistrate Judge and agrees with the Report of the Magistrate Judge. *See*

United States v. Raddatz, 447 U.S. 667, 683 (1980) (" '[T]he statute permits the district court to give to the magistrate's proposed findings of fact and recommendations 'such weight as [their] merit commands and the sound discretion of the judge warrants . . . .' ") (quoting *Mathews v. Weber*, 423 U.S. 261, 275 (1976)).

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate he would prevail on the merits. Rather, he must demonstrate the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner or that the questions raised are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

In this case, Petitioner has not shown that the issue of whether his petition is barred by the applicable statute of limitations is subject to debate among jurist of reasons. Nor has he shown that the questions presented are worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

The Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 17) as the findings and conclusions of this Court. Accordingly, it is

ORDERED that this petition for writ of habeas corpus is **DISMISSED**.

So ORDERED and SIGNED this 21st day of July, 2021.

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE